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In the Matter of:)
American Hospital Association's)
Blanket Waiver request for use of) Reference: WP 10-54
Amateur radio frequencies.)
)
To the Commission:

OPPOSITION TO HOSPITAL BLANKET WAIVER REQUEST

SUBTITLE

The Fleecing of Amateur Radio

Anyone with average intelligence who, devoid of emotion, and applying a modicum of critical thinking would arrive at the conclusion this American Hospital Association's (AHA) request for a Blanket Waiver is not only vacuous and absurd, but patently offensive. This request makes a mockery of the Federal Communications Commission (FCC), its rules, the United States Public Law and the United States Congress in its task of upholding the International treaty to which it is a part. Further, proffering this and other 47CFR97.113 waiver requests for consideration shows the distinct disregard Commission subordinates have in respecting their responsibility for the Delegated authority given them to uphold the public trust in administering the laws and regulations entrusted to the Federal Communication Commission.

1 The Delegated Authority should have returned this letter to the writer with
2 prejudice. They should have returned it because it does not meet the
3 qualifications for a waiver request under any circumstances. They should have
4 returned it because the writer demonstrated prior knowledge of DA-09-2259 and
5 thus knew they did not qualify, directly, for a waiver. They should have
6 returned it because the letter provably shows the utter incompetence and gross
7 negligence of the writer through:

- 8 1) a complete lack of understanding the law;
- 9 2) a complete lack of understanding the rules;
- 10 3) exhibited contempt for following those laws and rules;
- 11 4) reflects the lacking character of the AHA and;
- 12 5) the unmitigated insulting disrespect toward not only the FCC
13 but the entire Amateur radio community.

14
15 The nature and intent of the AHA are quite evident and telling by carefully
16 reading the last two paragraphs on page two and the first paragraph on page
17 three. Here this foolhardy, and no doubt, fool of a writer display total
18 disregard for the Amateur service, its participants and the rules they must
19 follow. Besides totally mis-characterizing other aspects of Amateur radio,
20 this writer completely marginalizes Part 97.113 and then with total arrogance
21 and contempt says Part 97.113 really does not mean what it says. Clearly this
22 writer never learned to do proper research. The only other conclusion is this
23 foolish signatory rubber stamped a letter prepared by others without even
24 giving it a cursory review and checking of facts. That begs the question of
25 who prepared the letter if the writer did not. Was it someone else within the
26 AHA ? Or was it from outside ? Two very good possibilities come to mind.
27 One is a private association. The other is a department of a federal agency
28 interested in pushing this matter.

1 Obviously, the public will never learn the truth. No matter, as the evidence
2 before us clearly shows whoever wrote the letter has absolutely no
3 understanding of the Amateur service, its history and laws or they just simply
4 do not care.

5
6 The writer, on page two, paragraph one, admits it is a voluntary inclusion (my
7 emphasis in red): "Thus, if a hospital plans on utilizing Amateur Radio as a
8 backup communications source during a disaster pursuant to Standard
9 EM.02.02.01, it must conduct at least two emergency drills annually utilizing
10 Amateur Radio." Relying upon the 2009 Joint Commission on Accreditation
11 Standards Handbook, section EM.02.02.01, the writer quotes the relevant
12 portion from page 53, titled "Rationale for EM.02.02.01" which says: "The
13 hospital maintains reliable communications capabilities for the purpose of
14 communicating response efforts to staff, patients, and external organizations.
15 The hospital establishes backup communications processes and technologies (for
16 example, cell phones, landlines, bulletin boards, fax machines, satellite
17 phones, Amateur Radio, text messages) to communicate essential information if
18 primary communications systems fail." This makes no statement that they
19 require Amateur radio for accreditation. Also, the Joint Commission on
20 Accreditation makes no definitive statement as to the frequency of drills or
21 tests though proffering the construct of "at least two . . ."

22
23 Around 1910, to improve hospital quality and functionality, a private group
24 got started leading to establishing an accreditation process. Today they call
25 it the Joint Commission on Accreditation. Participation is voluntary ! This
26 carries financial implications on several levels, for example; cost of the
27 accreditation, better insurance rates and charging higher patent fees for
28 having the accreditation. The AHA is not the accreditation commission. They

1 are a "special interest" group amounting to nothing more then a lobbyist or
2 union requiring dues, like the Teamsters.

3
4 All of this is not the concern of the Amateur radio operator, yet the writer
5 strives, by innuendo, to give the impression that they need Amateur radio to
6 get accreditation. That is false ! This letter, on its face, at the very
7 least, is being coy and manipulative. It clearly shows a pecuniary interest
8 by the AHA on behalf of its members to reduce the costs, by each hospital, to
9 request waivers for each instance though they do not qualify as stated in DA-
10 09-2259.

11
12 The AHA claims to have about 5000 hospitals under its umbrella. It fails to
13 state that it does not represent all hospitals or any subordinate forms of
14 smaller clinics, etc.

15
16 47CFR97 already permits Amateur radio operators to provide communications in
17 times of emergency, including passage of third party messages. No prohibition
18 exists against a "volunteer" Amateur radio operator from preparing, by doing
19 tests and drills, whenever he chooses. The only steadfast exclusionary clause
20 is that it cannot be done for the direct pecuniary interest of the Amateur
21 operator, or others, or on behalf of the Amateur's employer. During a drill
22 or a real emergency the pecuniary aspect does not mean the Amateur could not
23 order life supporting materials like food, water, shelter or even fuel to
24 support his continued existence and operating. What it does mean is the
25 Amateur operator cannot charge or be paid for his time, or his use of, or the
26 use of, his equipment. Hence, the statement of "on behalf of his employer" as
27 that is, in effect, his being paid for his time, use of his license and use of
28 his equipment.

1 What really amazes me is why these hospital employees are fooling with a radio
2 when they should be attending to the patients in need of medical attention.
3 **OOPS, you are having a heart attack, but wait, I got to talk on the Amateur**
4 **radio first. Are these people serious ?** The reason they have employed these
5 people at hospitals is to do a job related to medical treatment, not to play a
6 radio operator ? The math just does not add up !

7
8 No-good reasons exist why these hospitals and other functionaries cannot use
9 the everyday "volunteer" Amateur radio operator. They (hospitals) do not want
10 to do so is because they do not want to deal with volunteers and all that go
11 with that.

12
13 For inclusion in this record, I am appending a submitted motion relevant to
14 this matter from November 2009. That submission directly addresses the non
15 validity of the AHA letter requesting a blanket waiver.

16
17 Again, I oppose the AHA waiver request and any other requested waivers that
18 Delegated Authority has or intends to approve regarding 47CFR97.113. These
19 waiver requests are in direct contravention to the International
20 Telecommunications Union treaty, the laws of the United States of America, and
21 the rules and regulations of the Federal Communications Commission.

22
23
24 WB6BNQ

25 William Houlne

26 2732 Grove Street

27 National City, CA 91950

ADDENDUM

For inclusion into the record of WP 10-54 follows

MOTION FOR PROTECTIVE OR CLARIFYING ORDER

and

Application for review of action taken pursuant to delegated authority

Submitted November 2009

1 **Before the**
2 **Federal Communications Commission**
3 **Washington, D. C. 20554**
4

5 In the Matter of:)
6 Commission comments concerning the)
7 use of the "waiver" process for a) Reference: DA 09-2259
8 Government entity's usage of Amateur) DA 09-2302
9 radio under 47CFR97 as stated via a) DA 09-2420
10 public notice # DA-2259.)
11

12 To the Commission:

13 **MOTION FOR PROTECTIVE OR CLARIFYING ORDER**

14 **and**

15 **Application for review of action taken pursuant to delegated authority**
16

17 47**CFR**97 already had the necessary rules permitting the Amateur service to pass
18 messages from a "third" party to another "third" party, including so called
19 "emergency" communication, during "normal" Amateur radio use. The only
20 restriction is it cannot be done for pecuniary reasons. This includes a
21 licensed Amateur who is an employee operating a station "on behalf of" his
22 employer.
23

24 Granting of waivers represents an illegal and improper attempt to circumvent
25 the plain requirements of 47**CFR**97 because it has the effect of reading
26 47**CFR**97.113(a)(2) and (a)(3) completely out of the Rules. To the extent that
27 the amateur service does provide "**structured**" emergency communications, it is
28 supposed to be done within the framework of RACES.

1 A prime requirement of regulatory interpretation is the Commission must read
2 the regulation in question as a whole and in context. The purpose of the
3 regulation is to accomplish a desired result. The Commission can only
4 accomplish this if it has read and construed the regulation as a whole and not
5 in parts; otherwise the Commission's intention, as ordered after public rule
6 making, will not be effectuated.

7
8 The true crux of the matter is twofold. First, the Amateurs, themselves, are
9 disproportionately **selling** the "hobby" as an "emergency" service, which it is
10 not. Second, the "served" agencies want their employees in charge as actual
11 licensed operators, but this violates the remunerative prohibitions of
12 **47CFR113(a)(2)** as follows: "**Communications for hire or for material**
13 **compensation, direct or indirect, paid or promised, except as otherwise**
14 **provided in these rules;**" and **47CFR97.113(a)(3)** which provides specifically as
15 follows: "**Communications in which the station licensee or control operator has**
16 **a pecuniary interest, including communications on behalf of an employer.**"

17 18 ABOUT THOSE WAIVERS 19

20 Though **47CFR1.3** provides for a "waiver" process, it does so with a "good
21 cause" requirement as specified in **47CFR1.925**. In the public notice, DA 09-
22 2259 (Released: October 20, 2009), Delegated authority, while correctly
23 clarifying a particular aspect of **47CFR97**, inadvertently left the impression
24 that a waiver is a simple, readily usable, easy and routine process with which
25 to circumvent the current rules under **47CFR97**.

26
27 Clearly, if "good cause" is required then it is not a simple, easy, or routine
28 process and the Commission never intended it to be a readily usable method for

1 circumventing the rules. Five possible grounds for "Good cause" are set forth
2 in 47CFR1.925. They are: 47CFR1.925(3)(i) - **public interest is frustrated;**
3 47CFR1.925(3)(ii) - **inequitable application, unduly burdensome, contrary to**
4 **the public interest, or no reasonable alternative.**

5
6 The reason no "good cause" exists for the issuance of a waiver is that none of
7 the requirements exist for a finding of "good cause" as defined in
8 47CFR1.925(3)(i) and 47CFR1.925(3)(ii), and it cannot be inequitable if
9 47CFR97.113(a)(3) specifically prohibits it. By requesting a waiver the
10 applicants admit they are doing it with remuneration from and "on behalf of"
11 their employer and that is precisely why they are requesting a waiver.
12 47CFR97.113(a)(3) is very precise regarding remuneration and employment.

13 14 **WHAT PROMPTED THE PUBLIC NOTICE DA 09-2259 ?**

15
16 A major reason the "public notice" came about is due to inquiries about Amateur
17 operators, whom hospitals employed, who operated the hospital's Amateur radio
18 "emergency" net operations. A popular Amateur radio Internet WEB site forum
19 questioned this practice. Then some Commission staff comments concerning this
20 subject became a major discussion on said WEB site, and other venues, which
21 created the need for a cohesive Commission statement in DA 09-2259.

22
23 While DA 09-2259 refers to "government-sponsored emergency preparedness and
24 disaster drills," many Amateur operations deal with hospitals and other
25 entities whom a government function has not necessarily sponsored. These
26 hospitals are a for-profit operation and, it seems, that many are wanting to
27 require some of their staff become licensed Amateur radio operators because
28 they then do not have to depend upon volunteers. The same thing is happening

1 with government functions like police, fire, rescue operations and
2 particularly with State level Emergency Operations.

3
4 These government entities see some benefit in using Amateur radio. Amateur
5 radio equipment is cheaper than its commercial equivalent. Licensing is very
6 easy and spectrum usage is not a problem in contrast to the issues surrounding
7 47CFR90 frequency assignments.

8
9 However, the **real problem** is due to the constant promotion, by the American
10 Radio Relay League, other Amateur organizations and Amateurs themselves, to
11 sell the virtues of Amateur radio as providing "emergency" communications.
12 The "served agencies" would hardly pay attention to the Amateur service save
13 for the constant, misplaced and disproportionate promotion. This wrong headed
14 promotion of the Amateur service as an emergency communication medium raises
15 the question of whether, in the absence of such promotion, the served agencies
16 would even consider using the Amateur service in such a capacity in the first
17 instance. It appears that the serviced agencies' desire to use Amateurs as
18 emergency communication personnel is due partially to being hounded and partly
19 to being "politically correct" rather than that they truly need the additional
20 help. Lately the "politically correct" angle has major benefits because the
21 U.S. Department of Homeland Security is now providing government grant money
22 for Amateur applications.

23 24 **WHAT IS AMATEUR RADIO ?**

25
26 47CFR97.3(4) clearly states the true purpose of Amateur service as "**A**
27 **radiocommunication service for the purpose of self-training, intercommunication and technical**
28 **investigations carried out by amateurs, that is, duly authorized persons interested in radio**

1 *technique solely with a personal aim and without pecuniary interest.*” This definition
2 agrees with the International Telecommunications Union treaty and the public
3 law contained in the United States Code. It should be noted that the term
4 “emergency” appears nowhere within that definition.

5
6 Amateur radio is a voluntary service whose fundamental purpose is five
7 principles listed in 47CFR97.1. However, 47CFR97.1 is just a general
8 statement of the basis and purpose of Amateur radio, unlike the *specific*
9 requirements imposed by other sections of the Rules. Amateur radio operators,
10 who generally have no legal training, tend to quote the generalized statements
11 in 47CFR97.1 as though they had more force and effect than the specific
12 statements contained elsewhere in the Rules. This is incorrect, and the
13 Commission should clarify these Amateurs’ incorrect understanding of Part 97.

14
15 Title 47 of the CFR, in §97.3, contains the specific statement of the purpose
16 of the Amateur radio service. Nowhere within any of the definitions contained
17 in 47CFR97.3 is the term “emergency” used, defined or explained. The ability
18 to provide “emergency” communications, while salutary, is not a proper
19 purpose of the Amateur service. Other radio services have that purpose
20 instead. The reason emergency communications is not a specified purpose of
21 Amateur radio is because it is a voluntary service. Amateur radio has no
22 binding contractual obligation to provide any “emergency,” or for that matter,
23 any third party traffic of any kind.

24
25 The only statutory language permitting the use of a 47CFR97 station for other
26 than its designated purpose is 47CFR97.5(b)(4) and 47CFR97.407, called RACES.
27 The purpose of RACES is to allow a government entity to use a cadre of trained
28 radio operators in time of “public” peril be it local, regional, or a national

1 event, especially if the President of the United States invokes the "WAR
2 POWERS ACT." However, it appears that although the Rules provide for the
3 issuance and renewal of the RACES licenses, the Commission no longer issues or
4 renews RACES licenses.

5 6 **THE SERVED AGENCIES**

7
8 Promoting a waiver to circumvent the rules as common practice is illegal and
9 sends the message that the Rules are meaningless. Allowing waivers is not
10 going to solve the "perceived" problem; "perceived" because no real problem
11 exists.

12
13 The "perceived" problem is the Agency wanting their management personnel
14 licensed so they can be in control of the Amateur communications. This is
15 akin to saying the Ford Motor Company's upper management need to be auto
16 mechanics to manage the company properly. This is just simply silly and
17 clearly not so !

18
19 Having a licensed employee operating is not going to fix poor management
20 problems. More likely, it is the employed Amateur who wants to be part of the
21 action and is driving the circumstances; thus, putting his "agency" in harms
22 way of 47CFR113.

23 24 **WHAT IS WRONG ?**

25
26 The wording, intent and meaning of 47CFR97 are, generally, quite clear, yet
27 many Amateurs lack the sophistication to understand its contents. This is
28 partly due to the dramatic reduction in the requirements for licensing. The

1 Commission has rewritten the rules several times trying to make them clearer
2 and in so doing have also broadened the scope of permissible operations.
3 Perhaps they have been too permissive ? The old adage of "give them an inch
4 and they will take a mile" appropriately describe those who are so adamant
5 about "emergency" communications.

6
7 Over the last twenty-five some odd years, the American Radio Relay League
8 (ARRL) has mounted a major effort to push the "emergency" aspect of the
9 Amateur radio service. This "emergency" spin also includes promoting an
10 insane amount of NON "emergency" functions like parades and numerous civic
11 events. The stated reason is "it is the primary reason for the Amateur
12 service and the justification for keeping the spectrum allocations currently
13 allotted to the service." That statement may have some truth regarding those
14 allocations where the signal propagation does not exceed our political
15 borders. This is not so on those allocations where signals exceed our
16 political boundaries due to treaty agreements binding the United States as a
17 member of the International Telecommunications Union.

18
19 This ARRL focus brought new entrants to Amateur radio who have little, or no
20 interest in contributing to the advancement of the radio art. Instead, these
21 new entrants are intimately and solely aimed at providing volunteer
22 communications to "served agencies" and other non government entities.
23 Unfortunately, the ARRL's indoctrination was so thorough that these new
24 entrants think "emergency" communication is the primary objective of the
25 Amateur service, contrary to the facts.

26
27 **SO WHAT IS WRONG ?** Again, the real problem is due to the constant,
28 disproportionate promotion, by ill-advised Amateurs, to sell the virtues of

1 Amateur radio providing "emergency" communications, even if it violates
2 47CFR113. Pecuniary interest should apply to the U.S. Department of Homeland
3 Security grant money for Amateur applications. Particularly so if it is an
4 Amateur or group of Amateurs independently receiving such a grant instead of a
5 government entity.

6
7 **THE PROTECTIVE ORDER REQUEST**
8 **and Application for review**
9

10 The term "public" as used in Title 47 refers to the greater populace, that is,
11 all the citizens of the United States of America. Thus terms attached to
12 "public" like frustration, inequities, burdensome, and contrary carry the same
13 meaning. Unfortunately, most of the Amateur's involved in the "emergency"
14 game fail to understand such intricacies and see themselves as the "public"
15 being frustrated.

16
17 So far, to my knowledge, the Commission, through delegated authority, has
18 approved two waivers. DA 09-2302 with five employees and DA 09-2420 with a
19 whopping eleven employees.

20
21 Regarding the above waivers, I am unable to see where any public frustrations
22 exist, except for not wanting to follow the rules. No inequities exist except
23 the burdensome requirement of following the rules. Likewise, no circumstances
24 exist that are contrary to the public interest. Plenty of avenues exist with
25 other sections of Title 47 providing reasonable alternatives, including
26 learning how to properly manage.

27
28 Specifically regarding DA 09-2302 and DA 09-2420, I would like to know exactly

1 how the "public interest" (47CFR1.925(3)(i)) was frustrated because these
2 employees could not use Amateur radio on behalf of their employer ? Failing
3 that, exactly which of the four items of 47CFR1.925(3)(ii) {"**inequitable**
4 **application,**" or "**unduly burdensome,**" or "**contrary to the public interest**" or "**no reasonable**
5 **alternative**"} thwarted the "public interest" if these employees could not,
6 personally and directly, use Amateur radio on behalf of their employer ?
7

8 Delegated authority's approval of the above waivers is procedurally flawed and
9 violates the statutory construction of Title 47 of the Code of Federal
10 Regulations. The waiver process is not a medium for fixing poor management or
11 stroking some Amateur's ego.
12

13 I am submitting this as an **Application for review of action taken pursuant to**
14 **delegated authority.** Additionally, by this submission, I am also seeking a
15 **Protective Order** halting further waivers until the Commission can properly
16 resolve this matter.
17

18 Respectfully,
19
20

21 WB6BNQ

22 William Houlne

23 2732 Grove Street

24 National City, CA 91950
25
26
27
28